

9.09.00.00 - WITHDRAWAL OF DEPOSIT BEFORE JUDGMENT

9.09.01.00 Defendant's Rights

Under CCP Section 1255.210, a defendant may file and serve a verified application for withdrawal of all or a portion of the deposit. Defendant can also have the deposit invested for the benefit of all defendants upon proper motion to the Court (CCP Section 1255.075). Interest on the amount withdrawn ceases at the time of withdrawal.

9.09.02.00 Objections to Withdrawal

The Department has 20 days after receipt of service of the Application to object to the withdrawal or until the time for all objections has expired, whichever is later. The Regional Legal Office shall immediately prepare the necessary objection on verification from the District that there are currently other parties to the proceeding or parties believed to have interests in the property.

The Department may file an objection to the withdrawal when other parties to the proceeding are known or believed to have an interest or when the bond filed by the applicant (or sureties therein) is insufficient. The Court may require that a bond (undertaking) be filed when there are conflicting claims to the amount sought to be withdrawn or when the amount to be withdrawn exceeds the original deposit, which had been increased. (See CCP Sections 1255.230 and 1255.240.)

The Regional Legal Office must file the objection with the Court and serve the applicant within 20 days of receipt of service. Then the District must expeditiously serve all other interests with a notice advising that they may appear within 10 days of service of the notice to object to the application for withdrawal.

9.09.03.00 Application for Withdrawal of Security Deposit

Because of the limited time involved, the District must send, without delay, a verified application to the Court with a copy to the State's attorney. The application shows the applicant's interest in the property and the amount to be withdrawn. The State's attorney contacts the District to get the names and addresses of all parties having an interest in and/or possession of the property. Since this information must be provided at once, it is imperative that the

District have a current title report. After receipt of the information, the State's attorney prepares a Notice of Application for Withdrawal of Deposit and Declaration of Service and serves it on the parties whose names and addresses are set forth therein. The Notice must be served in time for a return of service to be made to the Court within the required 20-day period.

9.09.04.00 Service of Application for Withdrawal and Declaration of Service

The Regional Legal Office prepares a Notice and Declaration of Service of Application of Withdrawal and forwards it to the District. The District serves the Notice and Declaration on all parties who have not previously appeared or who have not been served with a Summons. Service is by personal service unless the party resides out of state, has departed from the state, or cannot be found with due diligence within the state. Then service may be made by registered or certified mail sent to such party's last known address.

The Regional Legal Office serves, by regular mail, those parties who have previously been served with a Summons or who have appeared in the proceeding and their attorneys of record. The service includes parties whose default has been entered but not parties who have disclaimed or who have been dismissed.

The District shall forward the Declaration of Service to the State's attorney without delay once all parties have been served. The Regional Legal Office prepares a report of service and files and serves the report on the applicant. The report contains the names of parties served and the dates of service, as well as the names and last known addresses of parties known to or believed to have an interest but who have not previously appeared or who have not been served personally.

It is important that the Right of Way records reflect any withdrawal so the amount is credited when settlement is reached. The withdrawal must also be reflected in the record of deposits to assure that any subsequent Order authorizing withdrawal of Deposit directs the release of no greater amount than the balance remaining on deposit after payment of the earlier withdrawal.

The Court order to withdraw all or any portion of the amount deposited by the State will not include interest on such amount to the date of withdrawal. Payment of interest is made only after judgment has been rendered. Separate computations are necessary in all cases where a withdrawal has been made from the deposit. Interest is computed in the judgment on the principal amount of compensation from the OP date to date of payment of the amount withdrawn. A separate computation is made on the balance of the award from the date of withdrawal to the date of payment of the remaining balance.

9.09.05.00 Procedure for Withdrawal

After all notices are given, the Court holds a hearing to determine the amounts to be withdrawn and who shall withdraw them. If no other parties have an interest in the property, no hearing is necessary. If no party having an interest in the property appears and objects within 10 days after service of notice, all objections are waived and a hearing is not necessary.

The Order of the Court authorizing the withdrawal directs either the State Treasurer or the Court (County Clerk) to pay the amount authorized to the defendant or other persons determined to have an interest in the property. Whether the Order is directed to the State Treasurer or to the County Clerk depends on whether the original deposit was made with the County Clerk or into the Condemnation Deposits Fund in the State Treasury. In most cases the deposit is in the State Treasury (CCP 1255.070).

The defendant is responsible for forwarding a copy of the Order to the County Clerk or State Treasurer. Payment is made directly to the defendant or other parties authorized in the Order. The District should follow up on applications for withdrawal to determine whether such payments have actually been made. The State's attorney obtains copies of the Order and forwards one copy to the District. The District supplies one certified copy of the Order to the Division of Accounting.

NOTE: The State's attorney writes directly to the Office of the State Treasurer advising whether the withdrawal as proposed is in order. Copies of this letter are sent to the District and Accounting Service Center.

If the Order directs the payment from the deposit with the Court (County Clerk), the District prepares Form A-163, Authorization to Cancel or Reduce Accounts Receivable Bill, covering the amount withdrawn.

When the Order directs the State Treasurer to pay the amount to be withdrawn, the Accounting Service Center initiates the Form A-163 and forwards copies to the District.

9.09.06.00 Waiver of Defense

If any portion of the money deposited is withdrawn, the party waives all defenses to the action except a claim for greater compensation. The amount withdrawn shall be credited upon the judgment ultimately entered in the proceeding.

9.09.07.00 Waiver of Objection

If no other party has objected and there is no independent reason for the Department's objection, the Department's objection shall be waived when the Regional Legal Office forwards the Report of Service, Notice of Application for Withdrawal, and Declaration of Service to the Court. The District shall file a copy of the waiver signed by the State's attorney with the Court and serve it on the applicant.

9.09.08.00 Security Deposit—Conflicting Claims to Amount Withdrawn

The Court must determine whether the applicant shall file a bond (undertaking) to secure a third party claimant. If the Court allows withdrawal and parties have not been served, the Court may require a bond by the applicant to indemnify the Department against liability. Unless the bond is required because of an issue as to title, the applicant can recover premiums paid as part of recoverable costs in the eminent domain proceeding.

9.09.09.00 Repayment of Amount of Excess Withdrawal

A party who withdraws an amount in excess of any entitlement, as finally determined, must pay the excess to the party entitled thereto. The Court enters judgment to that effect.

The judgment does not include interest except in the following cases:

- **Withdrawal by Another Defendant** - An amount to be paid to a defendant shall include legal interest from the date of its withdrawal by another defendant.
- **Excess Withdrawal** - If the defendant who requested the Department to increase the original deposit has made an excess withdrawal, any amount of the excess attributable to the increased deposit shall be repaid to the Department including legal interest from date of withdrawal.

In the case of an excess withdrawal, the Court may grant a defendant up to one year to repay the Department. If the Court authorizes such delay in repayment, the District records an abstract of the judgment in the appropriate county. If repayment has not been made by the expiration of the authorized delay period, the District shall notify the Regional Legal Office. It determines the appropriate means to recover the excess withdrawn plus interest, if applicable.

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